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Due Date: August 17, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Larry A. Coldren et al. Examiner: Jeffrey N. Zahn
Serial No.: 09/872,438 Group Art Unit: 2828
Filed: June 1, 2001 Docket: G&C 122.2-US-U1
Title: HIGH-POWER, MANUFACTURABLE SAMPLED GRATING DISTRIBUTED
BRAGG REFLECTOR LASERS

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office on August 16, 2002.

By: 

Name: Bradley K. Lork

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

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AUG 16 2002

Dear Sir:

TECHNOLOGY CENTER 2800

The Office Action dated July 17, 2002 required restriction of the claims into two claim Groups. In response, Applicants elect Group I, namely claims 1-13 and 27-39, however, Applicants do so with traverse.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

The Examiner does not assert that the inventions of the two claim Groups are independent. Rather, the Examiner only alleges that the inventions of the two claim Groups are distinct because

the method steps claimed can be used to produce other optical components, i.e. a waveguide without a laser, an external DBR filter/resonator. As both requirements of §121 are not met, Applicants respectfully submit that the restriction requirement is improper.

In addition, Applicants further urge the Examiner take into consideration that the subject matter of each of the claim Groups is linked by a common inventive concept. According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Applicants assert that a search into prior art with regard to the invention of the different Groups is so related that separate significant search efforts should not be necessary. Accordingly, there is no serious burden on the Examiner to collectively examine the different claim Groups of the subject application. Consequently, the restriction is not proper under M.P.E.P. §803.

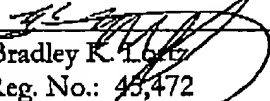
In view of the foregoing, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. It is also submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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